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Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Mission to Serbia, including Kosovo* **, ***

Summary

The Working Group on Enforced or Involuntary Disappearances visited Serbia, including Kosovo, from 19 to 26 June 2014.

The Working Group wishes to thank the Government of Serbia, the United Nations Interim Administration Mission in Kosovo (UNMIK) and the authorities in Kosovo for their cooperation before and during the visit.

The visit took place in the context of an official regional visit during which the Working Group also visited Croatia and Montenegro. Given the amount of time that has passed since the enforced disappearances occurred and the advanced age of many witnesses, relatives and perpetrators, there is an urgent need for everyone involved in the search for missing persons in the region to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex, is circulated in the language of submission only.

** Late submission.

*** All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

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The Working Group is concerned that regional cooperation is marred with mutual mistrust. It calls on everyone involved to contribute to fostering a trusting environment to promote regional cooperation, inter-ethnic reconciliation and social cohesion. The Working Group stresses that successful cooperation requires clear and strong political commitment from the highest levels of all parties involved.

The Working Group stresses that enforced disappearance should be established as a separate offence in domestic legislation. The Working Group calls on the Government of Serbia and the authorities in Kosovo to continue their efforts in the search for missing persons and the identification of human remains; to ensure efficient prosecution of war crimes in line with international standards; to adopt all measures necessary to combat impunity; and to set up comprehensive reparation programmes.

The Working Group is of the view that international bodies acting as interim administrators in Kosovo should be held accountable for human rights violations. It calls on relevant international bodies to facilitate the search for missing persons and to ensure effective investigations into and prosecution of war crimes.

Annex

[English only]

Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Serbia, including Kosovo (19-26 June 2014)

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I. Introduction

1. The United Nations Working Group on Enforced or Involuntary Disappearances, represented by three of its members, Ariel Dulitzky, Jasminka Dzumhur and Osman El Hajjé, visited Serbia, including Kosovo, from 19 to 26 June 2014.

2. The purpose of the visit was to examine matters related to enforced disappearances and missing persons in Serbia, including Kosovo, focusing in particular on truth, justice, reparation and memory for victims. While the Working Group is mandated to deal with issues related to enforced disappearance, the issues related to enforced disappearance and missing persons are clearly interlinked in this particular context. The Working Group makes reference in the present report to victims of enforced disappearance and missing persons, and remains aware of the legal and factual differences between them.

3. The Working Group thanks the Government of Serbia for its cooperation before and during the visit. It would also like to thank the United Nations Interim Administration Mission in Kosovo (UNMIK), in particular the Special Representative of the Secretary-General for Kosovo and Head of UNMIK, and the authorities in Kosovo for their support in the organization and conduct of the visit in Kosovo. The Working Group also thanks the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) Human Rights Adviser in Serbia and the OHCHR stand-alone office in Kosovo for their assistance and advice before and during the visit.

4. During the visit, in Serbia, the delegation held meetings with the Assistant Minister of Foreign Affairs; the President of the Government Commission on Missing Persons; the Assistant Minister for Legislation and other representatives of the Criminal Department of the Ministry of Justice; the Head of the Office for War Crimes, representatives of the Cabinet and of the Ministry of the Interior; the Director of the Government Office for Human and Minority Rights; the First Deputy of the War Crimes Prosecutor and the Senior Adviser of the War Crimes Prosecutor; the President of the Parliamentary Committee on Human and Minority Rights and Gender Equality; the Deputy Ombudsperson for the Rights of Persons Deprived of Liberty; relatives of missing persons and associations of their families, non-governmental organizations and other civil society and international representatives. During the visit, the Working Group attended the exhumation of the mass grave in Rudnica, Raska.

5. In Kosovo, the delegation held meetings with the President of Kosovo, the Government Commission on Missing Persons of Kosovo, representatives of UNMIK and members of the UNMIK Human Rights Advisory Panel, the European Union Rule of Law Mission in Kosovo (EULEX), other international representatives, relatives and associations of families of missing persons, and other non-governmental organizations. During the visit, the Working Group visited Pristina, Gracanica and Rezala.

6. The Working Group thanks all interlocutors for their cooperation and the valuable inputs provided.

II. Regional context

7. The visit to Serbia, including Kosovo, took place in the context of an official 16-day regional visit which also included Croatia and Montenegro. While the present report addresses matters mainly related to Serbia, including Kosovo, the issue of enforced disappearances and missing persons in the Western Balkans cannot be examined without

taking into account the general regional perspective.[1] The Working Group visited Bosnia and Herzegovina in 2010 (see A/HRC/16/48/Add.1). According to the International Committee of the Red Cross (ICRC), to date, the fate or whereabouts of over 23,000 persons missing as a result of the Balkan conflicts has been established. However, ICRC has indicated that over 11,000 persons are still missing in the region and that there are unidentified remains belonging to hundreds of bodies in morgues throughout the region.[2] The Working Group identified some common issues and challenges relating to missing persons and disappearances in the region.

8. Despite impressive results in the past, progress in the search for missing persons in the region has slowed down significantly in recent years, and many families are extremely frustrated by that. It is becoming urgent to ensure that the process of identifying mass grave locations and burial places speeds up as soon as possible, primarily because memories are fading and individuals, places and events are more difficult to identify. Furthermore, some of the witnesses have died or are likely to die in the next few years. Additionally, and even more importantly, some relatives of missing persons are reaching the end of their lives and risk dying without ever knowing the truth about the fate or whereabouts of their loved ones.

9. The conflicts in the former Yugoslavia broke one country into several independent entities. That resulted in specific challenges, primarily obstacles to the prosecution of war crimes in the region, since the prosecution of war criminals may create tensions among States and entities.

10. In the absence of a legal framework for regional cooperation, searching for the disappeared and missing persons, conducting investigations and bringing those responsible for war crimes to justice becomes critically challenging, particularly because many victims, witnesses and perpetrators are living in the territories of different States and the scenes of the crimes are located in different countries. Often, the presence of an alleged perpetrator in another country where there is no willingness or legal grounds to prosecute leads to insurmountable obstacles to achieving accountability. Insufficient witness protection and the lack of incentives to encourage people to provide more information have also contributed to the slow progress of investigations.

11. Progress is also hampered by the fact that information and evidence that are available are often not shared across borders in the search and identification of the missing, as well as in the investigation, prosecution and conviction of war criminals. There is no centralized regional database on cases of missing persons, not even a list of all missing persons in the region. Several representatives of organizations of families of the disappeared expressed frustration at the ongoing and slow-paced discussions on the creation of a common list of the disappeared. The Working Group notes in this respect that a meeting among governmental institutions in charge of the issue of missing persons in the Western Balkans was held in May 2015 to discuss the establishment of a joint list of missing persons in the territories of the former Yugoslavia.

12. Furthermore, some archives that may contain information on the fate and whereabouts of the missing are not fully accessible.

13. A common gap at the regional level is the absence in existing legal systems of an autonomous crime of enforced disappearance and the absence of an encompassing framework for compensation and reparation for victims and their relatives.

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[1] For reports on the work of the Working Group in the region during the conflict, see E/CN.4/1994/26/Add.1, E/CN.4/1995/37, E/CN.4/1996/36, and E/CN.4/1997/55.

[2] See www.icrc.org/eng/resources/documents/interview/2013/08-28-disappeared-missing-western-balkans-milner.htm.

14. Another challenge in the Western Balkans is that between 3,000 and 5,000 of the bodies that have been exhumed have not yet been identified. Even after DNA analysis and cross-checking with the DNA database, which contains blood samples from over 97 per cent of the relatives of the victims, no match has been found in those cases. There are several possible explanations for that. It may be that, owing to the traditional methods that were used until the year 2000, there were misidentifications. Some estimates suggest that up to 30 per cent of identifications made using traditional methods may be erroneous. In order to verify the identifications that were made using traditional methods, all the bodies identified using those methods would have to be exhumed and bone samples taken for DNA testing. However, that would be an extremely difficult and painful process for the family members. It is also possible that some of the exhumed bodies are those of persons whose deaths were unrelated to the conflict. That could be the case if, for example, the bodies of victims of the conflict were buried in graveyards and their bones intermingled with those of other bodies over time. In addition, there is the possibility that the DNA samples match blood samples of relatives of missing persons from another country in the region, given the above-mentioned lack of a joint regional DNA database.

15. The International Commission on Missing Persons has actively promoted the signing of a declaration on missing persons. The Working Group was pleased to learn that, on 29 August 2014, Bosnia and Herzegovina, Croatia, Montenegro and Serbia signed the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses.[7] The Working Group welcomes this initiative, which highlights the primary responsibility of States in addressing the issue of missing persons, with the aim of guaranteeing the rights of victims. The Declaration also stresses the need for cooperation between Governments and with international and other organizations in the process of establishing the whereabouts of the missing persons. The authorities in Kosovo informed the Working Group that they had expressed their willingness to become a signatory to the Declaration, to no avail. The Working Group recognizes the importance of involving the authorities in Kosovo, through appropriate means, in regional cooperation activities to address the issue of missing persons.

16. The Working Group recognizes the important work that ICRC has carried out in the Balkans in the past 20 years, including facilitating negotiations and cooperation between concerned parties. Binational initiatives, many of which were facilitated, promoted and led by ICRC, are welcome developments that should be strengthened and expanded.

17. The International Commission on Missing Persons and ICRC have carried out important work in helping States to establish the whereabouts and identity of those who went missing during armed conflicts in this region, and in coordinating joint exhumations. They also played an essential role in the process of DNA analysis and collection of blood samples from family members of missing persons, which is a key precursor to the identification of the bodies that were recovered during the exhumation processes. Moreover, the Commission has facilitated cooperation between associations of families of disappeared persons from the region and is providing permanent support to the Regional Coordination of Missing Persons' Family Associations from the former Yugoslavia, which is an umbrella group of associations of families of disappeared persons from countries in the region.

18. The Working Group notes that some initiatives have been taken for regional cooperation in the search for the disappeared and in the area of transitional justice,

[7] See www.ic-mp.org/wp-content/uploads/2014/08/signed-declaration-2.pdf.

including the planned establishment of a regional truth commission (known as RECOM), as a non-political regional network of civil society organizations and individuals.

III. General situation concerning enforced disappearances and missing persons in Serbia, including Kosovo

19. Many years after the end of the conflicts, some progress in tracking and identifying missing persons has been achieved. In Serbia, a State Commission for Humanitarian Issues was established in November 1994, which included a Department for Searching for Missing Persons. In 2006, the Government established the Commission on Missing Persons, with a mandate to direct and coordinate activities in respect of the exhumation and identification of remains of missing persons found on the territory of Serbia. This crucial and active intergovernmental body includes representatives from 10 government departments.

20. An important mechanism addressing the issue of missing persons is the Working Group on persons unaccounted for in connection with events in Kosovo between 1998 and 1999 (Working Group on Missing Persons), which is chaired by ICRC. The Working Group was established in 2004 as a humanitarian forum facilitating the exchange of information between the Serbian authorities and the authorities in Kosovo on the fate and whereabouts of missing persons, in particular on potential gravesite locations. The Working Group members are appointed by both the Serbian authorities and the authorities in Kosovo. Representatives from relevant embassies and other international and national institutions are regularly invited to attend public sessions of the Working Group as observers. Under the auspices of the United Nations, the Working Group has contributed to the resolution of many cases over the years. On several occasions, various people involved in the process have stated that the participation of UNMIK in this mechanism is highly appreciated. In addition, the Government Commission on Missing Persons of Kosovo was established in 2006, as a continuation or upgrade of the Office on Missing Persons, which was operational until 2006 within the Office of the Prime Minister. Law No. 04/L-023 on Missing Persons, which entered into force in 2011, provides the legal mandate of the Commission on Missing Persons. The Commission is mandated to lead, supervise and coordinate activities with local and international institutions with regard to the clarification of the fate of missing persons as a result of 1998-1999 events in Kosovo.

21. With regard to regional cooperation, Serbia has signed a series of agreements and memorandums with Croatia in order to facilitate cooperation in respect of the search and identification of the missing, especially the exchange of information. An agreement with Bosnia and Herzegovina is in the process of adoption. Despite these agreements, practical challenges remain.

22. While no enforced disappearances reportedly occurred in central Serbia, as of June 2014, there were reportedly 1,443 families of missing persons living in Serbia. Furthermore, a significant number of bodies of persons who went missing in Kosovo were relocated after their deaths and were later found in central Serbia. Indeed, the Working Group visited the site of Rudnica, where the bodies of persons from the village of Rezalla, which is within the administrative boundary lines of Kosovo, were found. It is believed that the individuals were killed in Rezalla, buried there for a brief period and thereafter moved to the Rudnica site. Furthermore, during the conflicts, about 480 bodies washed ashore in Serbia from rivers that flow there from other territories. Only about 200 of them have been identified.

23. According to some associations of relatives of disappeared persons, some missing persons are not included in the list of missing persons because their disappearance was not reported to ICRC or the Red Cross of Serbia, or because the ICRC criteria for registering a

case were not fulfilled. According to the figures provided by the Government Commission on Missing Persons of Serbia, this is the case for approximately 740 Serbian citizens who fled to Serbia from Croatia. The Commission is reviewing those cases in coordination with the Croatian authorities.

24. ICRC has registered 6,027 cases of missing persons in connection with the 1998-2000 Kosovo conflict. Of those cases, 4,316 have been closed: 1,372 persons were located alive, the bodies of 2,729 were found, identified and returned to the families and 215 cases were closed for administrative reasons. As at 24 June 2014, some 1,711 persons from all ethnic backgrounds were missing as a result of the Kosovo conflict.

25. In Kosovo, most of the disappearances occurred during and immediately after the conflict, when international forces took charge. One of the biggest problems in the search for missing persons continues to be the lack of accurate information that could lead to the disclosure of their fate and whereabouts and the circumstances of their disappearances. A contributing factor is that different forces have had effective control of the territory of Kosovo, and assistance from the forces that were operating in Kosovo, such as the International Security Force in Kosovo (KFOR), is crucial in the search for and identification of persons who went missing as a result of the conflict. The authorities in Kosovo informed the Working Group after its visit that the Commission on Missing Persons has begun strengthening its cooperation with the competent institutions in Croatia and Montenegro to address both the issue of residents of Kosovo who went missing during the conflict in the former Yugoslavia and the issue of residents of other territories who disappeared during the conflict in Kosovo.

IV. Serbia

A. Legal framework

26. Serbia ratified the International Convention for the Protection of All Persons from Enforced Disappearance in 2011 and accepted the individual complaints and inquiry procedures pursuant to it. In February 2015, the Committee on Enforced Disappearances reviewed the initial report of Serbia under the Convention (CED/C/SRB/1).

27. The 2011 Criminal Code does not contain enforced disappearance as an autonomous crime. Enforced disappearance is recognized only in the context of crimes against humanity, when enforced disappearances are committed as part of a widespread and systematic attack against civilians. Amendments to the Criminal Code are being discussed and may result in the inclusion of an autonomous crime of enforced disappearance.

28. There is no law regulating the status of missing persons and guaranteeing the rights of victims. That is a significant barrier to the realization of the rights of the relatives of the disappeared. In the absence of such a law, the only possible way for relatives of the disappeared to potentially qualify for any compensation or pension as a war victim is to legally declare the disappeared relative dead. There is no procedure in place for obtaining a declaration of absence by reason of enforced disappearance. Many relatives understandably refuse to legally declare their disappeared family member dead in the absence of any information on his or her fate or whereabouts and perceive that legal procedure as an additional trauma. As a result, they suffer additional consequences on several fronts, including in terms of social welfare, financial matters, family law and property rights.

29. The legislative framework provides for free legal aid to defendants,[4] but not to the victims of the offence and their relatives, which poses a serious challenge for some relatives of the disappeared. More broadly, the families of the disappeared often feel that they are not adequately informed about ongoing investigation processes, the results thereof, or ongoing trials.

30. The Criminal Procedure Code includes a narrow definition of victim, indicating only that the injured party is a person whose personal or property rights have been violated or jeopardized by a criminal offence.[5] That definition does not enable the relatives of a disappeared person to be recognized as victims in criminal proceedings. The narrow definition fails to encompass all those who have suffered harm as a result of the disappearance.

31. The legal framework provides some support and protection for witnesses in court proceedings.[6] It also provides for psychological support for victims and witnesses and a specific protection programme for witnesses in high-risk cases. However, there is an acute need to strengthen and systematize such programmes. The psychological support available to victims and witnesses should not be restricted to a short period of time before the person appears in court, as it is crucial both before and after the trial. It is important to include a clear gender perspective in such programmes and to pay special attention to the specific trauma of family members of missing persons. The protection programme for witnesses in high-risk cases is crucial to ensure that witnesses come forward to testify without putting themselves at risk. Many witnesses are reluctant to testify for fear of reprisals and threats, which in some cases results in acquittals owing to a lack of evidence. The challenge of providing adequate witness protection seems to be particularly pronounced in respect of cases relating to the Kosovo conflict.

32. Serbia does not have a national strategy on human rights or a human rights action plan. Such documents have been used in other countries as frameworks to address in a holistic manner the rights and concerns of the victims of enforced disappearances and their relatives.

B. Right to the truth

33. The Serbian Commission on Missing Persons has reported that, since January 2013, the authorities have carried out exhumations in four different locations. Representatives of Bosnia and Herzegovina and Croatia were present at and followed all the activities in relation to the exhumations. Similarly, Serbian representatives follow all exhumations that are carried out in Bosnia and Herzegovina and Croatia.

34. The mass grave in Rudnica was found as a result of an exchange of information within the Working Group on Missing Persons. Some 45 bodies were found in the exhumations, which were performed in accordance with the order issued by the War Crimes Chamber of Belgrade High Court, organized and coordinated by the Government Commission on Missing Persons and monitored by representatives of Belgrade and Pristina from the Working Group on Missing Persons, EULEX and ICRC. Serbian experts, working in cooperation with EULEX experts, took DNA samples, while the International Commission on Missing Persons performed the DNA analysis. The bodies were transported to the Department of Forensic Medicine in Pristina. After identification, the remains will be

[4] See art. 32 of the Constitution of the Republic of Serbia, 2006.

[5] See Criminal Procedure Code of Serbia, General Part Chap. 1, Basic Provisions, art. 2, para. 11 (2011).

[6] Ibid., art. 102.

handed over to the families, with the assistance of the Commission on Missing Persons of Kosovo.

35. In the years preceding the discovery of that mass grave, the amount of information exchanged within the Working Group on Missing Persons was limited and the number of cases it was able to clarify was relatively low. There is a need for a new strategy to reinvigorate efforts to identify possible gravesites.

36. In 2001 and 2002, hundreds of bodies were exhumed from large mass graves which were located in Bajina Bašta, Petrovo Selo and Batajnica, as a result of cooperation between Serbia and UNMIK, and later EULEX and the International Commission on Missing Persons. According to the Serbian Commission on Missing Persons, over 800 bodies were exhumed, over 90 per cent of which were identified. The remains are those of persons who were killed in Kosovo.

37. The determination of the fate or whereabouts of missing persons is particularly difficult in the context of Serbia, not only because in many cases the victims went missing on the territory of another State or within the administrative boundaries of Kosovo, but also because in some cases, the bodies of the missing were removed from the initial burial ground or scene of the crime and transferred elsewhere. Given that the police or military might have documented the transfer of bodies in some instances, some families of the disappeared observed that full access to such information could alleviate the cumbersome process of clarifying the fate or whereabouts of those who are still missing. Some requests to access such information have been rejected by the competent authorities in Serbia. However, a positive step in that regard was the opening of the archives of the Ministry of the Interior in 2013. The archives of the Ministry of Defence are kept secret and are not fully available.

38. The obstacles encountered in the determination of the fate and whereabouts of missing persons can be overcome only with full and open regional cooperation and coordination. The Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses (see para. 15 above) defines the responsibilities and role of States in the search for a solution to the problem, which is an important step in the process. The Working Group has learned that Serbia has signed a bilateral protocol with Croatia and has initiated negotiations with Bosnia and Herzegovina on a similar protocol.

39. Family members of missing persons repeatedly told the Working Group that witnesses, some of whom the family members could easily identify and locate, might have knowledge about the location of a mass grave or the circumstances of the death of the missing persons. However, the witnesses had not voluntarily provided that information because of intimidation, threats or fear that they would implicate themselves in a crime. It is imperative that an environment be created that is conducive for all persons who have any information that could potentially lead to the clarification of the fate or whereabouts of missing persons to come forward, and to provide incentives for them to do so. There is an urgent need to ensure swift progress in the identification of mass grave locations and burial places.

40. Several hundred exhumed bodies remain unidentified. For some specific remains, it is very difficult to extract any DNA because the bones are not suitable for DNA analysis. In order to speed up identification, in 2014 Serbia signed an agreement with the International Commission on Missing Persons, which has a regional database of missing persons. It is hoped that this will lead to additional identifications. The agreement relates specifically to the provision of assistance in locating, recovering and identifying missing persons related to the conflict in Kosovo.

41. The Working Group regrets the absence of a museum or information centre on the victims of the war and the fact that public awareness on past events has not been raised.

C. Right to justice

42. Specialized war crimes chambers to deal with war crime cases have been established. The main instance that holds alleged perpetrators accountable for war crimes is the Office of the War Crimes Prosecutor and the Department for War Crimes of the Higher Court in Belgrade. When evidence of a war crime is discovered, the War Crimes Prosecutor verifies the information and proceeds with the prosecution of the alleged perpetrator or perpetrators based on that assessment. According to the statistics published by the Office of the War Crimes Prosecutor, as at 29 December 2014, some 440 persons had been prosecuted for crimes committed during the war, of which 170 had been indicted.[7] About 80 per cent of those who have been prosecuted are of Serbian nationality. The cases are at various stages of proceedings before the competent courts. There is, however, an apparent decrease in the number of new war crimes indictments, as since 2009/2010 there have been only three newly indicted alleged perpetrators. The 440 ongoing prosecutions relate to 3,010 victims.

43. The alleged perpetrators of war crimes are prosecuted under the Criminal Code of 1993, which was applicable at the time the crimes were committed, but does not contain any provisions relating to the autonomous crime of enforced disappearance or to enforced disappearance as an element of a crime against humanity. However, alleged perpetrators of enforced disappearances can be prosecuted for other criminal offences, such as unlawful detention, hostage-taking, murder and torture.

44. The 440 individuals who are being prosecuted are mainly low-ranking officials, as the Serbian authorities acted on the assumption that the International Tribunal for the Former Yugoslavia[8] was responsible for the prosecution of high-level officials. That created a worrying gap for middle-ranking officials such as battalion commanders and municipal leaders who were not prosecuted by the Tribunal or the Serbian war crimes chamber. The Working Group welcomes the fact that the Serbian authorities have expressed their intention to address that gap, which results in impunity.

45. Some alleged perpetrators, even while indicted in relation to war crimes, are still exercising their official functions. This is a source of impunity and frustration for victims, and may also entail constant threats and intimidation to victims, witnesses and their families.

46. Serbia applies the principle of non-extradition of its own nationals, who cannot be handed over to a foreign State for prosecution, but criminal proceedings are supposed to be instigated in Serbia at the initiative of the prosecutor. However, the Working Group is concerned at reports that there is some resistance, including from the public and the media, to efforts to prosecute Serbian suspects in relation to war crime charges. The work of those

[7] See www.tuzilastvorz.org.rs (accessed 12 January 2015).

[8] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990s. Those indicted by the Tribunal include heads of State, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the conflicts. Its indictments address crimes committed from 1991 to 2001 against members of various ethnic groups in Bosnia and Herzegovina, Croatia, Serbia, the former Yugoslav Republic of Macedonia and Kosovo. See www.icty.org/sections/AbouttheICTY.

investigating and prosecuting war crimes is reportedly not popular and they are often perceived and labelled as traitors.

47. Representatives of the War Crimes Prosecutor informed the Working Group that the trials in absentia of some Serbian nationals in Croatia in respect of war crimes are not recognized by Serbia. Should those cases be brought before a Serbian court, they would revert to the pretrial phase.

48. Bilateral cooperation between Serbia and Croatia is regulated by the European Convention on Mutual Assistance in Criminal Matters, which was ratified by the former Federal Republic of Yugoslavia in 2001.

49. The Organization for Security and Cooperation in Europe supported the improvement of regional judicial cooperation on war crimes proceedings between Bosnia and Herzegovina, Croatia, Montenegro and Serbia. The strengthened regional contacts have contributed to the development of specific mechanisms for better cooperation, such as the memorandum signed by the War Crimes Prosecutor and the Public Prosecutor of the Republic of Serbia and the State Prosecutors of Bosnia and Herzegovina and Croatia. These regional contacts have also paved the way for increasing cooperation among the offices of the prosecutors of these States in dealing with specific cases.

50. In order to ensure more efficient and professional cooperation between the offices of the war crimes prosecutors, several agreements have been concluded. In 2005, a joint memorandum on pretrial cooperation was signed between the offices of the supreme prosecutors in Bosnia and Herzegovina, Croatia and Serbia. Also in 2005, on 5 February, the Memorandum on the Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes was signed by the Serbian Public Prosecutor and War Crimes Prosecutor and the Croatian Chief Prosecutor. It regulates the process of exchanging information regarding the criminal offences of war crimes between the offices of the prosecutors of the two States. Both States are obliged to exchange data, reports, documents and information relevant to war crimes investigations. To date, the Croatian authorities have initiated proceedings against citizens of Serbia in 319 cases based on information exchanged pursuant to the memorandum. The Croatian authorities requested specific information on those cases from Serbia and at a later stage submitted the cases to the Serbian War Crimes Prosecutor, who then examined whether there were sufficient grounds to proceed with the prosecution.

51. Article 2 of the Law on the Organization and Competence of Government Authorities in War Crimes Proceedings* extends the jurisdiction of Serbia to all States of the former Socialist Federal Republic of Yugoslavia, regardless of the citizenship of the perpetrator or the victim. The law was applied, for example, in the Purda case and the Divjak case. On 13 October 2006, a special agreement on cooperation in respect of prosecuting perpetrators of war crimes, crimes against humanity and genocide was signed with Croatia. On 31 January 2013, Serbia signed a similar protocol with Bosnia and Herzegovina. On 31 October 2007, Serbia and Montenegro signed the Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide. It is hoped that these agreements will further contribute to the exchange of evidence, documents and information that will facilitate more effective investigation and punishment of all war crimes. The Protocol on cooperation between the offices of the prosecutors completes the scope of the existing regional cooperation arrangements in the area of war crimes investigations.

* As amended by the Parliament of Serbia in 2004.

52. On 11 November 2004, the Serbian War Crimes Prosecutor met with the UNMIK judicial representatives, the Deputy Special Representative of the Secretary-General for UNMIK in charge of judicial and police sectors, and the UNMIK Justice Department Director. The meeting resulted in an agreement providing for witnesses located on the territory of Kosovo to be examined by the Serbian judicial authorities, and for UNMIK judicial representatives to examine witnesses located on the territory of the Republic of Serbia.

53. These bilateral or multilateral agreements on cooperation provide some guidance on technical cooperation. However, the Working Group learned that, given the technical nature of the agreements, their implementation is entirely dependent on political will, which is often lacking. In this respect, it should be emphasized that effective regional cooperation is one of the preconditions for the International Tribunal for the Former Yugoslavia to refer cases to national courts.

54. To date, there has been no agreement between the different regional police forces in respect of cooperation on war crimes, unlike in the area of organized crime. Cooperation between police forces on war crimes is therefore conducted on an ad hoc basis. The need to increase and operationalize regional police cooperation on war crimes cases was repeatedly expressed to the Working Group during its visit.

55. According to information from the Office of the War Crimes Prosecutor in Serbia, in terms of regional cooperation there were a total 303 exchanges of information: 159 with Croatia, 45 with Bosnia and Herzegovina, 12 with Montenegro and 87 with EULEX/UNMIK.[10]

D. Right to reparation

56. Serbia has established reparation programmes for the victims of the war, but not specifically for the victims of enforced disappearance and their families. The reparation programmes mainly consist of monthly financial benefits that are stipulated in the Law on the Fundamental Rights of War Veterans, Disabled Veterans and Families of Fallen Soldiers, and the Law on the Rights of Civilian Victims of War. These programmes do not apply to family members of civilian missing persons. Only civilian victims who have been injured by enemy troops on the territory of Serbia have the right to claim compensation under the current law. That may result in different treatment among the different categories of victims, and may prevent many of them from receiving adequate compensation. This falls short of the requirements specified by the Working Group in its general comment on article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance, according to which the right to redress of victims of an act of enforced disappearance and their family places States "under an obligation to adopt legislative and other measures in order to enable the victims to claim compensation before the courts or special administrative bodies empowered to grant compensation".[11] The general comment also indicates that redress for acts of enforced disappearance includes "the means for as complete a rehabilitation as possible".[12]

57. Relatives of the disappeared stated that only those who do not have any income receive some social benefits as reparation. The amount of compensation is dependent on the household income and prior to receiving it, the relatives have to legally declare the missing

[10] See www.tuzilastvorz.org.rs.
[11] See E/CN.4/1998/43, para. 72.
[12] Ibid., para. 75.

person as dead. This is in contrast with the requirement in general comment on article 19, which states that "the right of compensation in relation to an act of enforced disappearance shall not be made conditional on the death of the victim … If the death of a victim cannot be established … States have an obligation to provide for appropriate legal procedures leading to the presumption of death or similar legal status of the victim which entitles the dependants to exercise their right to compensation".[13]

58. The current system of reparations does not cover all victims of enforced disappearances. A number of family members of disappeared relatives have not received any compensation or financial support. While the Working Group welcomes the efforts to implement a comprehensive plan to ensure that all victims of war crimes are covered and receive adequate reparations, there is currently no comprehensive plan for compensation of victims of enforced disappearance.

V. Kosovo

A. Legal framework

59. Enforced disappearance has not yet been incorporated as an autonomous crime in the criminal legislation of Kosovo.

60. The authorities in Kosovo adopted the Strategy for Human Rights for the period 2009-2011, and there is an initiative for a new strategy. It is important that this strategy is based on a proper and comprehensive assessment of the human rights situation and includes issues related to enforced disappearances and missing persons.

61. The Constitution of Kosovo recognizes the applicability of international human rights treaties. The authorities in Kosovo informed the Working Group about a number of other laws, such as the Law on Witnesses and the Law on the Department of Forensic Medicine. In Kosovo, two laws have been adopted regulating the status of missing persons and guaranteeing the rights of the victims. The law regulating the status and rights of martyrs, invalids, veterans, members of Kosovo Liberation Army, civilian victims of war and their families determines the status and financial support available. That Law was amended through Law No. 04/L-054, which provides legal recognition of the status of civilian victims of sexual violence related to the conflict in Kosovo. The Law on Missing Persons aims to protect the rights and interests of missing persons and their family members, in particular the right of family members to know the fate of the missing persons. It establishes the powers and responsibilities of the Governmental Commission on Missing Persons.

B. Right to the truth

62. Family members and representatives of associations of families of missing persons expressed their deep frustration about the difficulties they encounter when trying to access the information they need to clarify the fate and whereabouts of their loved ones. As provided by the Law on Missing Persons, the authorities in Kosovo are reportedly establishing a central register on missing persons, which will include data on the search, recovery and identification process and information on the rights of the victims and their families. Families of missing persons will be granted access to the database.

[13] Ibid., para. 74.

63. One major obstacle to establishing the fate and whereabouts of missing persons in Kosovo is the lack of precise information on the locations of undiscovered gravesites. The Serbian authorities are believed to possess more information than that contained in the documents already submitted. There is a common perception in Kosovo that the Serbian military has complete records of the locations of gravesites, yet has not fully opened its archive. Meanwhile, it is believed that the authorities in Kosovo have not shared information that they possess either. Another difficulty is the reluctance of witnesses to provide information owing to threats, intimidation, a sense of loyalty or the fear that they might implicate themselves in the crime.

64. With regard to identification work, misidentification in the early days has resulted in significant challenges in identifying human remains from recent exhumations. The remains of approximately 300 bodies in the morgue in Pristina have not been identified. The preservation of the bodies is becoming a challenge. According to the International Commission on Missing Persons, 412 unidentified individual DNA profiles from Kosovo do not match any of the blood samples in their database. This confirms the fear that a number of errors occurred during the identification work conducted in the early years based on traditional methods, before the introduction of DNA testing. Civil society organizations and the International Commission on Missing Persons have been promoting a review process to address the misidentifications conducted in the past. Provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care, a review process is essential for the ongoing identification work.

65. The Commission on Missing Persons of Kosovo was established under the Law on Missing Persons, which was adopted in 2011. The Working Group notes the efforts made by the Commission and was informed that the principle of non-discrimination has been given importance in the work of the Commission to ensure that the rights of all families of missing persons are guaranteed, regardless of their ethnic background, religion or military or civil status. However, the Working Group also notes that the seat on the Commission that is reserved for ethnic minority groups has been vacant for some time.

66. EULEX supports the work of the Kosovo Department of Forensic Medicine with respect to the exhumation and identification of bodies. On 30 October 2014, EULEX personnel working for the Kosovo Department of Forensic Medicine carried out a court order in Cabrat cemetery in Gjakova/Djakovica and conducted the exhumation of 14 graves, with the purpose of correctly identifying the remains that had been found in Serbia in 2001. The remains buried in Cabrat cemetery and others buried in Kline/Klina and Malisheve/Malisevo, which are mainly those of victims of the events in Gjakova/Djakovica and Kralan/Kraljane, are linked to more than 50 other cases of individuals still listed as missing persons. The remains were taken to the Department of Forensic Medicine for further identification and DNA analysis. After the process has been finalized in its entirety, the Department of Forensic Medicine will hand over all the correctly identified remains to their families, including those that were identified some years ago but have not yet been handed over to their families. The Kosovo authorities informed the Working Group after its visit about excavations in about 19 different locations in Kosovo and in about 3 different locations in Serbia.

67. Initiatives taken by civil society to seek and tell the truth include collecting evidence, accounts and stories that could contribute to the clarification of the fate of missing persons. Some organizations have also established memorials providing a venue for families of victims to tell their stories publicly and memorize their loved ones.

C. Right to justice

68. The complex situation in Kosovo after the conflicts is a contributing factor to the huge challenges related to the prosecution of the war crimes thereof. UNMIK was established in 1999 pursuant to Security Council resolution 1244 in order to bring a political solution to the Kosovo crisis. As an international civil presence, UNMIK was vested with authority over the territory and population of Kosovo, including all legislative and executive powers and administration of the judiciary.

69. The Working Group is concerned about consistent information received indicating that cases of enforced disappearances and missing persons were not properly investigated by UNMIK during its full-range administration in Kosovo. The Human Rights Committee has raised concern about the failure of UNMIK to effectively investigate many of the crimes perpetrated prior to the UNMIK mandate and bring perpetrators to justice.[14] Similarly, the Working Group notes with concern that the Human Rights Advisory Panel of UNMIK has ruled in several cases that the investigation of enforced disappearances and missing persons carried out by UNMIK failed to meet the minimum standard of an effective investigation as required by international human rights norms. In this regard, the Working Group considers that the failures by UNMIK should be properly addressed and the victims of those failures should be effectively compensated by the United Nations.

70. Since 2008, the mandates of UNMIK have been significantly modified. The adoption of a Presidential Statement by the Security Council on 26 November 2008 allowed the European Union, through EULEX, to operate in the rule of law area in Kosovo. EULEX became fully operational in April 2009 and its current mandate will expire on 14 June 2016. Since the transfer of responsibility from UNMIK, the prosecution of crimes has therefore been carried out by the EULEX War Crimes Investigation Unit and by EULEX prosecutors. The Working Group considers that failures by UNMIK in the early years cannot serve to absolve the current responsibility of EULEX prosecutors and investigators in such cases. The passing of time cannot serve as an excuse; the Working Group calls for EULEX to redouble its efforts to secure the rights to truth and justice of the victims.

71. EULEX had inherited a huge number of reports of missing persons submitted to UNMIK, some of which are not well documented and lack initial investigation. The Working Group also learned that EULEX recruited two additional prosecutors in 2013 and that EULEX judges have competence over war-related criminal trials. Despite efforts made, impunity for war-related crimes has not been eliminated, and only a very small number of cases are being tried each year. In particular, the Working Group received allegations that little progress has been achieved in the investigation and prosecution of abductions that took place in the summer of 1999; none of the cases that have been prosecuted or tried by EULEX to date involve cases of enforced disappearances, despite the number of persons who went missing during the conflict in Kosovo.

72. Since 15 April 2014, no new investigations have been initiated by EULEX, except in what it calls "exceptional circumstances". An important step was the decision, in April 2014, to create a special court for serious crimes committed during and after the conflict in Kosovo. The court will adjudicate cases against individuals based on a 2010 Council of Europe report prepared by Swiss senator Dick Marty, including abductions reportedly committed by some members of the Kosovo Liberation Army. The Working Group welcomes the fact that, on 3 August 2015, the Kosovo Assembly approved a constitutional amendment paving the way for the establishment of the court.

[14] See CCPR/C/UNK/CO/1, para. 12.

73. Most of the cases of enforced disappearances and other grave human rights violations committed in the context of the war should be processed after the transfer of competences to local prosecutors and judges. While local judges and prosecutors are reportedly working side by side with their international counterparts and the number of local judges and prosecutors working at EULEX has increased, the judicial system in Kosovo remains weak and lacks efficiency. The large backlog and the allegation that the judiciary is affected by corruption is concerning. The international community does not sufficiently support and strengthen capacity in Kosovo.

74. Non-attendance of defendants and witnesses at trial has resulted in the delay of criminal proceedings of many war crime cases, and a large number have remained on the docket for years. The Working Group learned that most of the alleged defendants are not in detention, and heard concerning reports of court hearings being cancelled owing to the absence of defendants who were already in custody. Training should be provided to personnel working for custodial services in Kosovo to ensure the delivery of a professional custodial service.

75. One of the main challenges that investigators face is the lack of witnesses ready to provide key testimonies on events and potential perpetrators. The lack of a comprehensive witness protection programme discourages witnesses in Kosovo from giving testimony in court, especially against anyone local, since loyalty is highly valued in the community. The fact that Kosovo is a relatively small community creates additional challenges in the protection of witnesses from potential pressure and harassment from locals. The Working Group welcomes the efforts of EULEX to provide protection for witnesses in high-risk cases by including them in the protection programme, and highlights the importance of further developing the programme. In addition, more should be done to foster conditions and incentives to encourage more witnesses to provide crucial information.

76. In the absence of a formal legal framework authorizing courts in Kosovo to use evidence received by the International Tribunal for the Former Yugoslavia, such evidence is introduced on an ad hoc basis by international EULEX prosecutors, appearing before EULEX international judges. The Working Group considers that the realization of the right to justice in Kosovo takes place in an exceptional context, given the multiplicity of individuals involved in the process and the fact that many of the alleged perpetrators, witnesses and families of victims are not in Kosovo.

77. The Working Group is concerned that justice seems to be left to the goodwill of the relevant parties. Kosovo should not be in a legal vacuum and it should be guaranteed, at a minimum, that those who were most responsible for the war crimes and crimes against humanity, including enforced disappearances, are prosecuted. The Working Group notes with great concern that some alleged perpetrators occupy positions of authority in Kosovo.

D. Right to reparation

78. Many victims in Kosovo have not received adequate reparation for their suffering. Reparation in cases of enforced disappearance entails not only monetary compensation, but also access to health care, legal aid, social benefits and rehabilitation programmes (restitution, satisfaction and guarantees of non-repetition).

79. Most families of victims of enforced disappearance live in poverty, as the direct victims of enforced disappearance were often the breadwinners in the household. While the situation is worse when the same family has more than one direct victim, the Kosovo authorities informed the Working Group that the amount of the pension increases if the family has more than one victim of enforced disappearance. In accordance with the law regulating the status and rights of martyrs, invalids, veterans, members of Kosovo

Liberation Army, civilian victims of war and their families, after conducting an administrative procedure, family members of disappeared persons are entitled to receive 168 euros per month, where there is one direct victim of disappearance in the family, until the whereabouts of their loved ones are established. The Kosovo authorities reported that family members whose relatives have been identified still enjoy by law the right to a pension. That, however, was unclear to relatives with whom the Working Group met during the visit.

80. The Working Group was also informed by family representatives that there are some administrative obstacles in access to that right, including difficulties obtaining documents from municipalities that should be submitted with the pension request; short deadlines; administrative staff who are unprepared for the implementation of the law; and the fact that the decisions of responsible bodies are reportedly issued in the Albanian language only. At the time of the visit of the Working Group, the pension was being provided to around 350 family members of disappeared persons. Before 2011, when the Law on Missing Persons entered into force, many families reportedly moved between categories of war victims as provided by law. Although the rate of the compensation has increased, the material support that families receive remains limited and is not enough to cover their basic living expenses. There is a difference between the compensation provided to civilians and soldiers; former combatants receive more compensation than civilian victims.

81. In addition, some families of victims of enforced disappearances live in the same community as the alleged perpetrators of those disappearances. While the Working Group did not receive any reports of serious harassment, families of victims feel re-traumatized by that fact. The authorities in Kosovo should facilitate and support the rehabilitation of the families of victims of enforced disappearances, including by taking measures to allow them to live in an environment in which they can best rehabilitate.

VI. Conclusions and recommendations

82. **Considering the amount of time that has passed since the disappearances occurred in the Western Balkans and the very advanced age of many relatives and witnesses, there is an urgent need for everyone involved in the process of searching for missing persons to set as an immediate priority the establishment of the truth, particularly the determination of the fate and whereabouts of all the disappeared. The issue of disappearances should be considered as a humanitarian as well as a human rights issue on the agenda of political processes. In particular, it should be on the agenda of the Belgrade-Pristina dialogue facilitated by the High Representative of the European Union for Foreign Affairs and Security Policy.**

83. **The Working Group recognizes that the United Nations and other international bodies did not adequately address a number of issues in relation to missing persons, and that the international community is also responsible for the lack of truth, justice and reparation that relatives continue to face.**

84. **The Working Group acknowledges the current working-level cooperation that takes place between forensic experts, prosecutors and judges across the region. However, speculation on political intentions has resulted in the ad hoc nature of the cooperation. The level of cooperation, including cooperation between international institutions, the Serbian authorities and the authorities in Kosovo, should be enhanced. Successful cooperation requires clear and strong political commitment from the highest levels of all parties involved. Currently, regional cooperation is marred by mutual mistrust, which results, inter alia, in delays in exhumations. Therefore, building trust between concerned parties is of high importance, they must**

all contribute to that process by putting ill-will behind them and fostering a trusting environment that will further promote regional cooperation. In the meantime, mature political conduct and determined political leadership are required in order to foster the inter-ethnic reconciliation and social cohesion that could eventually help establish the truth in the region.

85. The Working Group reiterates its gratitude for the cooperation it received throughout its visit. The Working Group was deeply saddened by the unbelievable suffering that the relatives of missing persons endured and have continued to endure for so many years. In the hope of being able to contribute some elements of a solution, the Working Group reiterates its offer of future cooperation and dialogue with all stakeholders.

A. Regional recommendations to Governments and authorities

86. Act with due urgency and speed in the matter of enforced disappearances, as required by the Declaration on the Protection of All Persons from Enforced Disappearance and other international obligations.

87. Disclose all information on mass graves and make that information accessible to all countries and authorities in the region.

88. Ensure high-level commitment to clarifying the fate and whereabouts of all missing persons, bringing all perpetrators to justice and ensuring full reparation for all victims.

89. Reinvigorate efforts to establish a common regional list of the disappeared.

90. Speed up the process of tracing missing persons through strengthened cooperation with institutions engaged in tracing disappeared persons in neighbouring countries, especially between prosecutors and judicial institutions. Such cooperation must include the exchange of relevant evidence.

91. Everyone involved must support the search for missing persons by providing relevant information and documentation at the national and regional level.

92. Continue the regional dialogue on missing persons and initiatives aimed at finding solutions to properly solve the issue.

93. Implement fully the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses, signed by Bosnia and Herzegovina, Croatia, Montenegro and Serbia.

94. Improve cooperation in accordance with the 1996 bilateral protocol between Serbia and Croatia.

95. Offer more in-service training to judges and prosecutors on the Declaration on the Protection of All Persons from Enforced Disappearance and other international instruments.

96. Immediately open archives that are relevant to cases of enforced disappearances in order to facilitate the localization of undiscovered gravesites and speed up the search for missing persons.

97. The Government of Serbia and the authorities in Kosovo should actively contribute to the Working Group on Missing Persons, including with information on new gravesite locations.

B. Recommendations to Serbia

98. **Establish enforced disappearance as a separate offence in accordance with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance. The offence of enforced disappearance should be punishable by appropriate penalties that take into account its extreme seriousness.**

99. **Recognize the status of families of missing persons by law and guarantee their rights in a non-discriminatory manner.**

100. **Establish an effective public system of free legal aid to allow relatives of missing persons to obtain legal assistance if they cannot afford it.**

101. **Ensure a gender-sensitive approach when designing and implementing reparation programmes, in order to address gender inequality.**

102. **Adopt a national human rights strategy or national action plan on human rights to address the issue of missing persons in a comprehensive manner.**

103. **Strengthen and systematize the witness protection programmes to ensure they are comprehensive.**

104. **Ensure reparation is available to all victims of enforced disappearance. Compensation should not be limited to the victims of enemy forces only. Serbia should consider introducing the necessary legislative amendments in order to broaden the definition of victim.**

105. **Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.**

106. **Ensure the equitable allocation of existing resources for the civilian victims of war in order to eradicate the discrimination between, inter alia, the budget for civilian and military victims of war.**

107. **Raise public awareness of war crimes prosecution, including investigation into cases of enforced disappearances, in order to reduce negative feelings about war crimes proceedings.**

108. **Set up regular consultations with families of victims of enforced disappearance and representatives of associations of families of disappeared persons.**

109. **Provide greater institutional and financial support to families and associations of families of victims of enforced disappearance.**

110. **Promulgate a law on access to information and a proper legislative framework on archives, so as to guarantee full access to all information that could potentially lead to clarification in cases of missing persons.**

111. **Examine without undue delay all locations of potential mass graves.**

112. **Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove obstacles of the ongoing identification work.**

113. **Expedite the process of war crimes prosecutions.**

114. **Initiate a vetting process to identify all government officials who were allegedly involved in the commission of war crimes. Improve and systematize vetting measures in the recruitment and appointment of State officials.**

115. **Conduct effective negotiations and reach an agreement on war crime cases with the authorities of Kosovo in order to establish an operational protocol on cooperation in the investigation and prosecution of war crimes.**

116. **Ensure media freedom and use the mass media to raise awareness of the issue of missing persons in the region.**

117. **Pay equal attention to all victims, regardless of their nationality, in respect of memorials. This principle should be integrated into future activities related to this element of reparation.**

118. **Develop educational materials that promote pluralism, and teach history objectively in order to combat ethnic polarization and ethnic discrimination.**

C. Recommendations to the authorities in Kosovo

119. **Intensify efforts in the search for missing persons and the identification of human remains that have been exhumed.**

120. **Seek technical assistance from international bodies operating on the ground to conduct institutional reforms aimed at establishing an independent and efficient judicial system.**

121. **Conduct effective negotiations and reach an agreement on war crime cases with the Serbian authorities in order to establish an operational protocol on cooperation in the investigation and prosecution of war crimes.**

122. **Conclude cooperation agreements with other international mechanisms involved in the investigation and prosecution of war crimes in order to facilitate technical cooperation, such as acquiring evidence, statements and documents related to the war in Kosovo.**

123. **Hold consultations with associations of families of missing persons, civil society organizations and other relevant stakeholders on the establishment of a central register on missing persons to ensure that the register contains all the information necessary to facilitate the clarification of the fate and whereabouts of missing persons in a transparent, inclusive and consultative manner.**

124. **Engage minority groups and ensure they are adequately represented in the Commission on Missing Persons. The Commission should ensure the implementation in practice of the principle of non-discrimination.**

125. **Engage associations of families of missing persons and encourage them to nominate members of the Commission on Missing Persons.**

126. **Organize joint commemorations for victims of missing persons from all ethnic backgrounds.**

127. **Adopt a law on the use in Kosovo of evidence collected by the International Tribunal for the Former Yugoslavia in order to ensure that evidence gathered by the Tribunal will continue to be admissible after the transfer of the mandate to local courts and prosecutors, protecting confidentiality rules.**

128. **Immediately open archives relevant to cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo, in order to facilitate the localization of undiscovered gravesites and to speed up the search.**

129. **Provide the families of missing persons with adequate and effective reparation. Consultations with victims from all ethnic groups should be held to hear their views**

on the specific nature of the reparation that they need. Language support should be provided upon request in the whole process.

130. Ensure that all victims of enforced disappearance obtain full reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, without discrimination and without having to declare the disappeared person dead.

131. Establish and effectively implement a comprehensive witness protection programme, with the support of international organizations.

132. Adopt a gender-sensitive approach when designing and implementing reparation programmes, in order to address gender inequality. Relocation assistance should be provided in cases where the victims live in the same community as the alleged perpetrators in order to facilitate the victims' rehabilitation and prevent them from being re-traumatized.

133. Address the possible misidentifications made in the past, provided that the right to privacy of the families of victims of enforced disappearances are fully respected and that the DNA data is protected with the utmost care. A review process should be initiated to remove the obstacles to the ongoing identification work.

134. Ensure media freedom and use the mass media to raise awareness of the issue of missing persons in the region.

135. Develop educational materials that promote pluralism, and teach history objectively in order to combat ethnic polarization and ethnic discrimination.

136. Put in place a strong vetting process in order to ensure that alleged perpetrators are not appointed to positions of authority.

D. Recommendations to international bodies

137. UNMIK and EULEX should engage with international human rights mechanisms with the aim of addressing issues related to enforced disappearance. International bodies acting as transitional administrators in Kosovo should be held accountable for human rights violations.

138. All international bodies that hold relevant information regarding cases of enforced disappearances that took place during and immediately after the 1998-1999 events in Kosovo should open their archives and facilitate the search and investigation.

139. ICRC should continue chairing the Working Group on Missing Persons and facilitate communication and cooperation in the region. ICRC should further strengthen and expand its initiatives.

140. The Working Group on Missing Persons should meet more frequently. In the meantime, the Working Group encourages UNMIK, as an observer of the body, to continue playing an active role.

141. UNMIK should seek suitable means to grant compensation to victims of human rights abuses as identified by its Human Rights Advisory Panel, especially in relation to the alleged ineffective investigations into cases of missing persons.

142. UNMIK should make additional efforts to encourage the effective continuation of investigations that were initiated prior to the transfer of power from UNMIK to EULEX.

143. **Acknowledging the challenging nature of the work of war crimes investigation and prosecution and the efforts made, EULEX must investigate all outstanding cases of enforced disappearances and bring the perpetrators to justice.**

144. **In order to encourage testimonies, EULEX, in cooperation with the authorities in Kosovo, should establish an effective and comprehensive witness protection programme, including relocation assistance.**

145. **Establish close cooperation with and invest more resources in capacity-building for local police officers, prosecutors, judges and forensic experts, including forensic archaeologists and forensic anthropologists. Ensure that ethnic Serbs are present at all training courses.**

146. **The Working Group invites the Government of Serbia, the authorities in Kosovo and the heads of mission of UNMIK and EULEX, within 90 days from the date of presentation of the present report to the Human Rights Council, to submit a timetable showing the steps they will take to implement the recommendations of the Working Group, the dates by which each measure will be taken and the dates by which they plan to finalize the implementation of the recommendations.**